IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10755 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASPAL DEVRAJ BHATIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10755 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR HM PRACHACHHAK AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/01/2005

ORAL JUDGEMENT

1. This petition is preferred by the petitioner under Article 226 of the Constitution of India challenging the order passed by Police Commissioner, City

of Ahmedabad, on 3rd of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner was directed to be detained as bootlegger under the PASA Act and in pursuance of the said order, the petitioner is detained from 03rd of July, 2004.

2. The grounds of detention as served upon the petitioner and as placed on record reveal that the detaining authority came to the conclusion that the petitioner was indulged in activity of storing, selling and transporting foreign liquor and thereby causing disturbance to the maintenance of public order and public health. Knowing fully well that the foreign liquor is injuries to public health, the petitioner indulged in activity of storing foreign liquor in his residential house and selling the same to the citizens. The detaining authority took into consideration the investigating papers of two criminal cases registered against the petitioner at Prohibition Police Station, Eastern Division, on 19.12.2004 and 6.6.2004 under Sections 66(1)B, 65-E and 116 (1)B of the Bombay Prohibition Act. In the first offence 34 bottles of foreign liquor was seized from the petitioner while in the second offence 15 bottles of foreign liquor came to be seized by police from the possession of the petitioner. From the above material, the detaining authority reached to subjective satisfaction that the petitioner was engaged in antisocial activities and was bootlegger within the meaning of the PASA Act. The detaining authority came to the conclusion that the illegal activities of the petitioner was required to be curbed forthwith and for that other redress like proceedings under Section 93 of the Bombay Prohibition Act or Section 57-C of the Bombay Police Act were of no use. In the above circumstances, the detaining authority came to the conclusion that there was no other alternative except detaining the petitioner under the PASA Act as bootlegger and hence the detaining authority passed the order of detention of petitioner which is challenged in this petition.

3. Learned Advocate Mrs. Subhadra G. Patel for the petitioner and learned AGP Mr. H.M. Prachchhak for the respondents were heard at length. Affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

4. Amongst various contentions raised on behalf of the petitioner and opposed and controverted by learned

AGP, it appears that the petition can be disposed of on the ground that whether there was sufficient material before the detaining authority to reach to the subjective satisfaction that by the activities of the petitioner, maintenance of public order was disturbed or public health was adversely affected. Admittedly, whatever material available with the detaining authority was in shape of investigating papers of two cases registered against the petitioner. Therefore, the question is whether this material is credible and sufficient to reach to subjective satisfaction that activities of the petitioner was hindrance to maintenance of public order and affecting adversely the public health.

5. The facts of the present case is covered by a decision of the Apex Court in the matter of RASHIDMIYA vs. POLICE COMMISSIONER, AHMEDABAD, as reported in AIR 1989 SC 1703. In similar circumstances, the Apex Court Court in para 17 observed as under :

> "17. The offences registered in the above mentioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

6. In the said decision, the Apex Court referred to the decision in the matter of Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad and further observed in para 20 observed as under :

> 20 In a recent decision of this Court in Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City, (1988) 4 JT 703: AIR 1989 SC 491, a question similar to one before us arose for consideration. In that case, the allegations in the grounds of detention were that the detenu was a prohibition bootlegger, that he has indulged into the sale of foreign liquor and that he and his associates indulged in use of force and violence and also beating innocent citizens by which an atmosphere of fear was created. In that case the detenu was alleged to have been caught red-handed possessing English wines with foreign marks and in the second occasion he was caught while shifting 296 bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows (at p. 497 of AIR):

"It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him, but surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affected adversely or are likely to affect adversely the maintenance of public order."

7. From the above, it is clear that mere fact of filing criminal cases under the Prohibition Act against the detenu is not credible material to reach to a conclusion that the activities of the detenu was affecting adversely to the public order. At the most, registration of crimes against the petitioner may be labelled as breach of law and order, for which he may be punished if he found guilty, but to reach a positive subjective satisfaction that the maintenance of public order is disrupted by the activities of the detenue, there must be some cogent and credible material denoting that the activities of the detenue directly or indirectly was causing or was likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. In the present case, nothing was placed before the detaining authority in the shape of material as to reach to subjective satisfaction that the activities of the petitioner was prejudicial to the maintenance of public order. In this view of the matter, the order of detention challenged in this petition is required to be quashed and set aside.

8. In the result, the petition is allowed and the detention order passed against the petitioner under the PASA Act by Commissioner of Police, Ahmedabad City, on 03 of July, 2004, is quashed and set aside. The petitioner - Jaspal Devraj Bhatiya is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair